Google Inc. et al v. Egger et al

APPENDIX

SELECTED STATUTES AUTHORIZING EXECUTIVE BRANCH OFFICIALS TO TAKE ACTION PREDICATED ON FACTUAL DETERMINATIONS OR JUDGMENTS

Statute	Relevant Language
Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 44303(b)	For acts of terrorism occurring between September 22, 2001 and May 31, 2009, the Secretary of Transportation "may certify that the air carrier was a victim of an act of terrorism and in the Secretary's judgment, based on the Secretary's analysis and conclusions regarding the facts and circumstances of each case, shall not be responsible for losses suffered by third parties . . . that exceed $100,000,000, in the aggregate, for all claims by such parties arising out of such act."
Atomic Testing Liability Act, 50 U.S.C. § 2783(c)	"A contractor against whom a civil action or proceeding [for injury or loss due to exposure to radiation from an atomic weapons testing program contracted by the United States] is brought shall promptly deliver all processes served upon that contractor to the Attorney General of the United States. Upon certification by the Attorney General that the suit against the contractor is within the provisions of subsection (b) of this section [regarding exclusivity of remedy], a civil action or proceeding commenced in a State court shall be removed [to the applicable federal court]." *See In re Consolidated United States Atmospheric Testing Litigation*, 820 F.2d 982 (9th Cir. 1987) (upholding the statute against various constitutional challenges)
Controlled Substances Act, 21 U.S.C. § 824(d)	"The Attorney General may, in his discretion, suspend any registration [to manufacture, distribute, or dispense a controlled substance or list I chemical] simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety."
Endangered Species Act, 16 U.S.C. § 1533(e)	"The Secretary [of the Interior] may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to this section if he finds that—(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this chapter." *See United States v. Hill*, 896 F. Supp. 1057, 1059–62 (D. Colo. 1995) (rejecting non-delegation challenge).

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Statute	Relevant Language
Extension and Termination of National Emergency Powers Under the Trading with the Enemy Act, 50 U.S.C. App. § 5 note	The President "may extend the exercise of [already existing embargoes] for one-year periods upon a determination for each such extension that the exercise of such authorities with respect to such country for another year is in the national interest of the United States." *See Freedom to Travel Campaign v. Newcomb*, 82 F.3d 1431, 1437 (9th Cir. 1996) (upholding the statute against non-delegation challenge).
Federal Employment Compensation Act, 5 U.S.C. § 8121	"The Secretary [of Labor] may waive . . . for reasonable cause shown" the requirements that a claim for compensation for work related injuries contain certain information and be sworn to and "accompanied by a certificate of the physician of the employee stating the nature of the injury."
Food Stamp Act of 1977, 7 U.S.C. § 2015(o)(4)	"On the request of a State agency, the Secretary [of Agriculture] may waive the applicability of [the work requirement] to any group of individuals in the State [receiving nutrition assistance] if the Secretary makes a determination that the area in which the individuals reside (i) has an unemployment rate of over 10 percent; or (ii) does not have a sufficient number of jobs to provide employment for the individuals."
Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(g)(1)(A)	"[T]he court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere."
Grain Standards Act, 7 U.S.C. § 77(a)(1)	The Secretary of Agriculture "may waive" the requirements regarding official weighing and inspection "in emergency or other circumstances which would not impair the objectives of this chapter."
Immigration and Nationality Act, 8 U.S.C. § 1157(c)(1)	"Subject to [certain] numerical limitations . . . the Attorney General may, in the Attorney General's discretion and pursuant to such regulations as the Attorney General may prescribe, admit any refugee who is not firmly resettled in any foreign country, is determined to be of special humanitarian concern to the United States, and is admissible . . . as an immigrant under this chapter."
Immigration and Nationality Act, 8 U.S.C. § 1157(c)(4)	"The refugee status of any alien (and of the spouse or child of the alien) may be terminated by the Attorney General pursuant to such regulations as the Attorney General may prescribe if the Attorney General determines that the alien was not in fact a refugee within the meaning of section 1101(a)(42) of this title at the time of the alien's admission."

Statute	Relevant Language
Immigration and Nationality Act, 8 U.S.C. § 1182(e)	"[U]pon the favorable recommendation of the Director [of the United States Information Agency] . . . the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest." *See Abdelhamid v. Ilchert*, 774 F.2d 1447, 1450 (9th Cir. 1985) (noting that the statute "does not expressly limit [the Director's] discretion in deciding whether or not to make a favorable recommendation [to the Attorney General]").
Immigration and Nationality Act, 8 U.S.C. § 1182e(c)	The Secretary of State "may waive" the prohibitions against issuing a visa to a foreign national involved in forced population control policies "if the Secretary (1) determines that it is important to the national interest of the United States to do so; and (2) provides written notification to the appropriate congressional committees containing a justification for the waiver."
Immigration and Nationality Act, 8 U.S.C. § 1221(h)	The Attorney General "may waive" the requirements regarding the duties of departing and arriving vessels and aircraft to provide manifest information about each passenger, crew member, or occupant "upon such circumstances and conditions as the Attorney General may by regulation prescribe."
Immigration and Nationality Act, 8 U.S.C. § 1227(a)(3)(C)(ii)	"The Attorney General may waive [the requirement that an alien found to have engaged in document fraud be deported] in the case of an alien lawfully admitted for personal residence if no previous civil money penalty was imposed against the alien [for the violation] and the offense was incurred solely to assist, aid, or support the alien's spouse or child (and no other individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this clause."
Immigration and Nationality Act, 8 U.S.C. § 1255a(d)(2)(B)(i)	"[T]he Attorney General may waive any other provision of section 1182(a) of this title [regarding classes of aliens ineligible for visas or admission] in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest."
Immigration and Nationality Act, 8 U.S.C. § 1324c(d)(7)	"The Attorney General may waive the penalties imposed by this section with respect to an alien who knowingly" fails to present a document relating to the alien's eligibility to enter the United States upon arriving in the United States, if, under specified sections of the same title, the alien "is granted asylum . . . or withholding of removal."
Immigration and Nationality Act, 8 U.S.C. § 1442(c)	"The Attorney General may, in his discretion, upon investigation fully establishing the loyalty of any alien enemy who did not have an application for naturalization pending at the beginning of the state of war, except such alien enemy from the classification of alien enemy for the purposes of this subchapter, and thereupon such alien shall have the privilege of filing an application for naturalization."
Immigration and Nationality Act, 8 U.S.C. § 1446(a)	"The Attorney General may, in his discretion, waive a personal investigation [otherwise required before a person may be naturalized] in an individual case or in such cases or classes of cases as may be designated by him."

Statute	Relevant Language
Intelligence Authorization Act, Fiscal Year 1991, 10 U.S.C. § 433(b)	"If the Secretary of Defense determines, in connection with a commercial activity authorized pursuant [to the Secretary's authority to authorize commercial activities necessary to provide security for intelligence activities abroad] that compliance with certain Federal laws or regulations pertaining to the management and administration of Federal agencies would create an unacceptable risk of compromise of an authorized intelligence activity, the Secretary may, to the extent necessary to prevent such compromise, waive compliance with such laws or regulations."
Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1853a(c)(2)	If a fishery has "historically processed the fish outside of the United States" and "the United States has a seafood safety equivalency agreement with the country where processing will occur," the Secretary of the Interior "may waive" the requirement (for approval of "a limited access privilege program to harvest fish") that "all fish harvested . . . be processed on vessels of the United States or on United States soil."
National Wildlife Refuge System Administration Act, 16 U.S.C. § 668dd(d)(2)	"[T]he Secretary [of the Interior] may not grant to any Federal, State, or local agency or to any private individual or organization any right-of-way, easement, or reservation in, over, across, through, or under any area within the [National Wildlife Refuge] system . . . unless the grantee pays to the Secretary [fair market value or fair rental value]. If any Federal, State, or local agency is exempted from such payment by any other provision of Federal law, such agency shall otherwise compensate the Secretary by any other means agreeable to the Secretary . . . except that . . . the Secretary may waive such requirement for compensation if he finds such requirement impracticable or unnecessary."
No Child Left Behind Act of 2001, 20 U.S.C. § 7426(e)	The Secretary of a department providing funds to be used in implementing a plan for the integration of education and related services provided to Indian students "shall have the authority to waive any regulation, policy, or procedure promulgated by that department that has been so identified by the entity or department, unless the Secretary of the affected department determines that such a waiver is inconsistent with the objectives of this subpart or those provisions of the statute from which the program involved derives authority that are specifically applicable to Indian students."
Protect Our Children Act of 2008, 42 U.S.C. § 17616(a)(3)(C)	"The Attorney General may waive, in whole or in part, the matching requirement" that is otherwise required under the statute to obtain funds remaining after grants have been issued "if the State or local [Internet Crimes Against Children] task force demonstrates good cause or financial hardship."
REAL ID Act, 8 U.S.C. § 1103 note	"Notwithstanding any other provision of law, the Secretary of Homeland Security shall have the authority to waive all legal requirements such Secretary, in such Secretary's sole discretion, determines necessary to ensure expeditious construction of the barriers and roads under this section." *See County of El Paso v. Chertoff*, 2008 WL 4372693 (W.D. Tex. Aug. 29, 2008) (upholding statute against non-delegation challenge); *Save Our Heritage Org. v. Gonzales*, 533 F. Supp. 2d 58 (D.D.C. 2008) (same); *Defenders of Wildlife v. Chertoff*, 527 F. Supp. 2d 119 (D.D.C. 2007) (same); *Sierra Club v. Ashcroft*, 2005 U.S. Dist. LEXIS 44244 (S.D. Cal. Dec. 12, 2005) (same).

Statute	Relevant Language
Small Business Investment Act of 1958, 7 U.S.C. § 2009cc-8(c)(2)	"The Secretary [of Agriculture] may, in the discretion of the Secretary and based on a showing of special circumstances and good cause, permit the private capital of a rural business investment company . . . to be less than $10,000,000[,] . . . if the Secretary determines that the action would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government."
Tariff Act of 1930, 19 U.S.C. § 1641(c)(2)	Regarding permits for customs brokers, the Secretary of the Treasury "may," if satisfied that the broker fulfills certain conditions, waive the requirement that the broker regularly employ at least one licensed person in a given district.
Trade Sanctions Reform and Export Enhancement Act of 2000, 22 U.S.C. § 7207(a)(3)	"The President may waive the application of paragraph 1 [forbidding the provision of U.S. government assistance] with respect to Iran, Libya, North Korea, and Sudan to the degree the President determines that it is in the national security interest of the United States to do so, or for humanitarian reasons." *See Acree v. Republic of Iraq*, 370 F.3d 41, 64 n.3 (D.C. Cir. 2004) (citing the statute as an example of the "waivers that the President is routinely empowered to make") (Roberts, J., concurring).
USA Patriot Act, 8 U.S.C. § 1226a(a)(3)	Upon having reasonable grounds to believe that an alien is engaging in certain prohibited activities or "is engaged in any other activity that endangers the national security of the United States," the Attorney General "may certify" the alien for detention until removal.
10 U.S.C. § 377(c)	The Secretary of Defense "may waive" the requirement that a civilian law enforcement agency that received support "reimburse the Department of Defense for that support," if the support "is provided in the normal course of military training or operations" or "results in a benefit to the element of the Department of Defense . . . that is substantially equivalent to that which would otherwise be obtained from military operation or training."
26 U.S.C. § 6325(b)(1)	"Subject to such regulations as the Secretary [of the Treasury] may prescribe, the Secretary may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority over such lien." *See E.J. Friedman Co., Inc. v. United States*, 6 F.3d 1355, 1359 (9th Cir. 1993) (noting that "[t]he section commits the decision to discharge a lien to agency discretion, and the statute is drawn such that there is no standard against which to judge the IRS's exercise of discretion").